Profession Act consequent on a report of the Disciplinary Committee appointed under the provisions of the Act, has failed to appear before us to show cause under the Show Cause Order. He has, so we are told, filed an affidavit in these proceedings which we declined to admit as evidence or as part of the record of these proceedings. The findings of the Disciplinary Committee were that on February 13, 1981, the Respondent with his junior, acting for a party in a contentious action which was tried by the late Mr. Justice D'Cotta, marched unannounced and without prior appointment into the late Judge's inner private chambers in the absence of the solicitors or counsel for the other party to the proceedings and was discourteous, rude and insolent to the late Judge. What made his conduct more reprehensible was that, as found by the Disciplinary Committee, the Respondent uttered a threat to report the late Judge to "high authority" and that he addressed the late Judge in an angry tone of voice. As the Disciplinary Committee said in its report, the late Judge's conduct to members of the Legal Profession has always been impeccable.

Having regard to these findings and the Respondent not having appeared in response to the Show Cause Order, we find the Respondent's conduct to be such as to come within the provisions of section 84(2)(b) of the Act. With regard to the question of the punishment, this conduct of the Respondent deserves the maximum punishment provided under section 84 and, accordingly, we order that he be struck off the Roll of this court and that he should pay the costs of today's proceedings and the costs of the Law Society before the Disciplinary Committee.

Order accordingly.

Solicitors: *Drew & Napier*

SUNTOSO JACOB v. KONG MIAO MING & ANOR.

[O.C.J. (Lai Kew Chai J.) May 14, 1984]
[Singapore – Civil Suit No. 3196 of 1981]

Company Law – Shares – First defendant holding 92,000 shares upon trust for plaintiff – Purpose of transfer of shares to first defendant was to deceive public administration of Singapore – Refusal of first defendant to retransfer said shares – Court will not lend its aid to man who founds his cause of action upon illegal act.

The plaintiff, an Indonesian national, sought a declaration that the first defendant was holding 92,000 shares of $1/- nominal value each in the second defendant company, Aspa Shipyard Pte. Ltd. upon trust for him and for an order that these shares be retransferred to him. The Company had a paid-up capital of 200,000 shares. If the plaintiff succeeded he would altogether own 190,000 shares in the Company and would be its controller.

The plaintiff claimed that in early 1980 the said shares were transferred by the plaintiff to the first defendant as his nominee, the first defendant having paid nothing for them and having executed a blank transfer form.

In February 1980, the plaintiff bought a tug from Japan. Subsequently, he instructed the first defendant to register the said tug under the Singapore flag in the name of the second defendant company.

At the material time, the Registrar of Singapore Ships had issued an administrative guideline in which it was clearly announced that as an administrative policy, vessels such as the tug boat, would not be accepted for registration under the Merchant Shipping Act (Cap. 172) unless the corporate owner was itself owned as to at least one-half of its equity by Singapore citizens. The plaintiff was aware of this requirement. The Asst. Registrar of Singapore Ships confirmed in evidence that if he had known that the first defendant had held the said shares upon trust for a foreign national, he would not have registered the tug as a Singapore vessel. The plaintiff himself admitted that the true ownership of the said shares had to be kept away from the Registrar of Singapore Ships in order to obtain registration.

Held, dismissing the plaintiff's claim: (1) on the evidence, the plaintiff had transferred the said shares to the first defendant in order that the Registrar of Singapore Ships would get a false picture. Although the first defendant had alone signed the registration papers containing the false representation, it was all done with the knowledge and consent of the plaintiff;

(2) "Let the said shares lie where they fall".

Cases referred to:

(1) *Holman* v. *Johnson* (1775), 1 Cowper 341; [1775-1802] All E.R. Rep. 98;

(2) *Palaniappa Chettiar* v. *Arunasalam Chettiar* [1962] M.L.J. 143.

CIVIL SUIT.

K.S. Chung (*Mirza Namazie* with him) for the plaintiff.

Lim Chor Pee for the defendants.

Cur. Adv. Vult.

Lai Kew Chai J.: In this action, the Plaintiff, an Indonesian national, is seeking a declaration that the First Defendant is holding 92,000 shares ("the said Shares") of $1 nominal value each in the Second Defendant Company ("the Company") upon trust for him and for an order that these shares be re-transferred to him. The Company has a paid-up capital of 200,000 shares. If the Plaintiff succeeds he will altogether own 190,000 shares in the Company and will obviously be its controller. It was asserted in the Statement of Claim that in early 1980 the said Shares were transferred by the Plaintiff to the First Defendant as his nominee, the First Defendant having paid nothing for them and having executed a blank transfer form.

The gist of the Defence was that the First Defendant had bought the said Shares from the Plaintiff, having paid for them in cash, by three instalments which he handed over to the Plaintiff.

Although the matter was not pleaded, at the resumed hearing of the case, the First Defendant through his Counsel began to cross-examine the Plaintiff on the basis that the whole transaction involving the transfer of the said Shares to the First Defendant was a deception practised by the Plaintiff on the public administration of Singapore. Accordingly, the First Defendant urged this Court not to lend its aid to the Plaintiff and to allow the said Shares to remain in his ownership.

To begin with, I should at once say that I reject the First Defendant's evidence that there was a sale of the said shares to him. The alleged payments of the consideration by instalments in cash were an untruth from first to last. The Company was then owning some office units and shares in quoted companies in Singapore. The alleged sale price bore no relationship to the net value of the said Shares at all. The First Defendant, who had all along assisted the Plaintiff in the affairs of the Company in Singapore, was a sort of personal assistant to the Plaintiff attending to all his needs in Singapore. I find that he simply could not afford to pay for the said Shares.

I turn now to the circumstances surrounding the transfer of the said Shares to the First Defendant. The Plaintiff had excellent business relationship with Pertamina, the Indonesian State corporation. Pertamina wanted to charter a tug from his company in Indonesia on terms which were very attractive. The Plaintiff went to Tokyo, Japan and on February 15, 1980 he bought a twin-screw tug boat of 3,000 BHP known as "Hansan Maru" for 60 million Japanese Yen. On the following day, he telephoned the First Defendant and told him of the purchase and asked him to put in process the registration of the tug under the Singapore flag in the name of the Company. The idea was for the Company to charter the tug to the Plaintiff's Indonesian company. When the Plaintiff visited Singapore in early February 1980 on his way back to Jakarta, he discussed the registration of the tug with the First Defendant.

When the Plaintiff was in Jakarta, he received a telex from the First Defendant to the effect that registration of the tug under the Singapore flag was possible only if the Company was owned in the majority by Singapore citizens. At that time, the First Defendant owned only 10,000 shares in the Company. So, the Plaintiff phoned the First Defendant. After some discussion, he instructed the First Defendant to transfer the said shares to himself to hold them upon trust for the Plaintiff. The Plaintiff said that he wanted to borrow on the tug after registration. After repayment of the loan, it was his intention to have the said Shares re-transferred to himself. He told the First Defendant to prepare all the necessary papers which were later signed. The tug was registered under the Singapore flag on the basis that the First Defendant, a Singapore citizen, owned at least more than half of the shares in the Company. The loan was raised on a mortgage of the tug. It was chartered to an Indonesian company known as P T. Aspa Shipping which in turn chartered it to Pertamina. The loan was repaid. But the First Defendant eventually refused to re-transfer the said Shares.

Now, at the material time, the Registrar of Singapore Ships had issued an administrative guideline (see AB57-58) in which it was clearly announced that as an administrative policy, vessels such as the tug boat, would not be accepted for registration under the Merchant Shipping Act, (Cap.172) unless the corporate owner is itself owned as to at least one-half of its equity by Singapore citizens. The Plaintiff was well aware of this requirement. Alan Wee Boon Heng, the Assistant Registrar of Singapore Ships, confirmed in evidence that if he had known that the First Defendant had held the said Shares upon trust for a foreign national, he would not have regis-

tered the tug as a Singapore vessel. The Plaintiff himself admitted that the true ownership of the said Shares had to be kept away from the Registrar of Singapore Ships in order to obtain registration. I am satisfied on the evidence that the Plaintiff had transferred the said Shares to the First Defendant in order that the Registrar of Singapore Ships would get a false picture. Although the First Defendant had alone signed the registration papers containing the false representation, it was all done with the knowledge and consent of the Plaintiff.

The Plaintiff is therefore confronted with the principle stated a long time ago by Lord Mansfield: "No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act.": see *Holman* v. *Johnson*[1]. A similar situation had arisen in *Palaniappa Chettiar* v. *Arunasalam Chettiar*[2]. I have no doubt that the Plaintiff had practised a deception on the Registrar of Singapore Ships. To the Plaintiff, I have to say: "Let the said Shares lie where they fall".

It was submitted on behalf of the Plaintiff that the administrative guidelines of the Registrar of Singapore Ships were directly in conflict with the provisions of section 369 of the Merchant Shipping Act (Cap. 172), in their unamended form in February 1980. I do not need to comment on the validity or otherwise of the guidelines. Assuming that they were invalid, their invalidity was no justification for the Plaintiff to practise a deception on the public administration of Singapore. He ought to have pursued his remedies in a lawful manner.

Accordingly, I dismiss the Plaintiff's claims against both the Defendants with costs.

Claims dismissed.

Solicitors: *Mallal & Namazie; Chor Pee & Co.*

LIAN SOON SHIPPING & TRADING CO. (PTE.) LTD. v. PUBLIC PROSECUTOR

[A.C.J. (Wee Chong Jin C.J.) June 28, 1984]
[Singapore – Magistrate's Appeal No. 22 of 1983]

Labour Law – Employment – Central Provident Fund – Failure to contribute to – Whether "genuine pre-estimates of expenses" incurred by crew includes "Food allowance" – Central Provident Fund Act (Cap. 121), s.7(1).

The appellants were convicted on eight charges of failing to pay contributions to the Central Provident Fund in respect of eight employees of the company as required by section 7(1) of the Central Provident Fund Act. The appellants appealed against the said decision. They contended, *inter alia,* that the expression "remuneration" in the definition of "wages" under section 2 of the Central Provident Fund Act does not include fixed payments made to cover genuine pre-estimates of an expense of a particular type of employees and that in the present case the payments made to the bunkering crew were "genuine pre-estimates of expenses necessarily incurred by the crew".

Held, dismissing the appeal: (1) there is no substance in the above submission. No inference could be drawn from Clause 25(c) of the first Collective Agreement that the amounts of $90/- and $60/- were genuine pre-estimates of the expenses necessarily incurred by the employees of the company who were engaged as locally engaged bunkering employees;

(2) the trial judge was correct on the evidence before him in finding the appellant company guilty and the appeal must accordingly be dismissed.

MAGISTRATE'S APPEAL.

G. Pannirselvam for the appellants.

Spencer Gwee (Deputy Public Prosecutor) for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The appellant company was convicted by a Magistrate's court on eight charges of failing to pay contributions to the Central Provident Fund in respect of eight employees of the company as required by section 7(1) of the Central Provident Fund Act ("the Act'). The company now appeals.

The undisputed facts are as follows. The eight employees named in the eight charges were locally engaged by the company on ships owned by the company which were engaged in the company's harbour trade of supplying bunkers for ships that come into Singapore territorial waters for bunkers. The nature of their employment required them to stay on board the vessel on which they worked for 24 hours at a stretch with alternate days off. Prior